IN THE SUPREME COURT OF THE STATE OF ALASKA

KEVEN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STTE OF ALASKA, DIVISION OF ELECTIONS, Appellants, v. VOTE YES FOR ALASKA'S FAIR SHARE, Appellee.	)	Supreme Court No. S-17818

Trial Court Case No. 3AN-190-11106CI

APPEAL FROM THE SUPERIOR COURT
THIRD JUDICIAL DISTRICT AT ANCHORAGE
HONORABLE WILLIAM F. MORSE

BRIEF OF APPELLEE

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Filed in the Supreme Court of
of the State of Alaska on
_____, 2020.

MEREDITH MONTGOMERY,
Clerk of the Appellate Courts

By_____
Deputy Clerk

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AS 15.45.180. Preparation of ballot title and proposition

(a) If the petition is properly filed, the lieutenant governor, with the assistance of the attorney general, shall prepare a ballot title and proposition. The ballot title shall, in not more than 25 words, indicate the general subject of the proposition. The proposition shall give a true and impartial summary of the proposed law. The total number of words used in the summary may not exceed the product of the number of sections in the proposed law multiplied by 50. In this subsection, "section" means a provision of the proposed law that is distinct from other provisions in purpose or subject matter.

(b) The proposition prepared under (a) of this section shall comply with AS 15.80.005 and shall be worded so that a "Yes" vote on the proposition is a vote to enact the proposed law.
AS 43.56.040. State Assessment Review Board.

AS 40.25.100. Disposition of tax information

(a) Information in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person, including information under AS 38.05.020(b)(11) that is subject to a confidentiality agreement under AS 38.05.020(b)(12), is not a matter of public record, except as provided in AS 43.05.230(i)-(l) or for purposes of investigation and law enforcement. The information shall be kept confidential except when its production is required in an official investigation, administrative adjudication under AS 43.05.405--43.05.499, or court proceeding. These restrictions do not prohibit the publication of statistics presented in a manner that prevents the identification of particular reports and items, prohibit the publication of tax lists showing the names of taxpayers who are delinquent and relevant information that may assist in the collection of delinquent taxes, or prohibit the publication of records, proceedings, and decisions under AS 43.05.405--43.05.499.

INTRODUCTION

As this Court has recently unanimously held, "[t]he Alaska Constitution provides that all political power is inherent in Alaska's people and 'founded upon their will only.'"[1] Among the inherent political rights of Alaska's people is the right to participate through direct democracy and enact laws by initiative pursuant to Article XI of the Alaska Constitution. This Court has long protected this inherent right of Alaska's people to enact laws by initiative.[2]

This appeal concerns the right of Alaska's people to have a true and impartial summary of the Fair Share Act[3] on their election ballot this November. For whatever reasons, Appellant Lieutenant Governor Kevin Meyer ("Meyer") has repeatedly attempted to use the power of his office to bias the summary that will appear on the election ballot. Appellee Vote Yes for Alaska's Fair Share ("Fair Share") calls upon this Court to once again protect the integrity of the inherent right of Alaska's people to enact laws by initiative and affirm the superior court's decision requiring Meyer to prepare a true and impartial summary of the Fair Share Act for the election ballot.

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[1] *Meyer v. Alaskans for Better Elections*, 465 P.3d 477 (Alaska 2020) (quoting Alaska Const. art. I, § 2 ("All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.").

[2] *See* n.7, *infra.*

[3] Provisions of the Fair Share Act. [Exc. 0091-92]

STATEMENT OF THE CASE

Legal Standards. This Court has long held that an initiative should be "presented clearly and honestly to the people of Alaska."[4] To achieve this, a summary of the proposed law must be "'a fair, concise, true and impartial statement of the intent of the proposed measure,'"[5] "'free from any misleading tendency, whether of amplification, of omission, or of fallacy, and . . . . must contain no partisan coloring.'"[6] In emphasizing "the important right of the people to enact laws by initiative," the Court has recognized that the "theory of initiative legislation [is] based upon the security that the legislation proposed and petitioned for by the people shall be voted upon at the polls by them without interference, revision, or mutilation by any official or set of officials[.]"[7]

Meyer. While in the Alaska Senate, Meyer took the unprecedented step of being one of two employee-legislators of ConocoPhillips to cast the deciding votes to pass Senate Bill 21 which created the existing production tax system, giving massive tax subsidies to his employer ConocoPhillips.[8] Since Senate Bill 21 passed, Alaskans have actually paid or continue to owe the oil producers more in cashable credits than the oil producers have

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[4] *Planned Parenthood of Alaska v. Campbell,* 232 P.3d 725, 731 (Alaska 2010) (quoting *Faipeas v. Municipality of Anchorage*, 860 P.2d 1214, 1221 (Alaska 1993)).

[5] *Planned Parenthood,* 232 P.3d at 731 (quoting *Burgess v. Alaska Lieutenant Governor*, 654 P.2d 273, 275 (Alaska 1982)).

[6] *Planned Parenthood*, 232 P.3d at 731 (quoting *Pebble Ltd. P'ship ex. rel. Pebble Mines Corp. v. Parnell*, 215 P.3d 1064, 1083 (Alaska 2009)).

[7] *McAlpine v. University of Alaska*, 762 P.2d 81, 93 (Alaska 1988) (quoting *Bennett v. Drullard*, 27 Cal.App. 180, 149 P. 368 (Cal. App. 1915)). The Court disagreed with *Bennett* in holding that "circumspect judicial exercise of the power to sever impermissible portions of initiatives will promote, rather than frustrate" the constitutional right and practical recourse of the sponsors. *Id.*

[8] Fair Share's Memorandum in Support of Summary Judgment at 11. [Exc. 0073]

actually paid in production taxes, and Alaskans are getting a far lesser share of the revenues from the sale of their oil than at any time before.[9] For example, for the five years before Senate Bill 21 passed, the net production revenues to Alaska were $19 billion or $3.8 billion per year.[10] In the five years since Senate Bill 21 passed, the net production revenues have been less than zero.[11] Meyer was instrumental in effecting this massive tax give away to his employer.[12] The Fair Share Act will transparently increase Alaskans share of oil revenues by amending key parts of Senate Bill 21 which Meyers was instrumental in passing.

Meyer's First Summary. Meyers has attempted to use the power of his office to bias the summary of the Fair Share Act not once, but he had sought to do so on three separate occasions. This Court's understanding of the extent of his efforts is important to understanding his arguments before this Court in their proper context.

Meyer's first summary ("First Summary"), which he printed in the petition signature booklets Fair Share was required to use when gathering signatures, was based on the one

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[9] Fair Share's Memorandum in Support of Summary Judgment at 9. [Exc. 0071]
[10] *Id.* [Exc. 0071]
[11] *Id.* [Exc. 0071]
[12] It would be difficult to overstate the political power and influence of the major international oil producers and their surrogates over matters relating to production taxes and the confidentiality of their revenues, costs, and profits from producing oil in Alaska. As recently as a few months ago, Justice Ginsberg in a concurring statement to a *pro curium* decision by the United States Supreme Court noted the political power and influence in Alaska of these major producers and suggested their power and influence may represent a "special justification" for maintaining low campaign contribution limits in Alaska. Justice Ginsberg stated, "Moreover, Alaska has the second smallest legislature in the country and derives approximately 90 percent of its revenues from one economic sector—the oil and gas industry." As the District Court suggested, these characteristics make Alaska "highly, if not uniquely, vulnerable to corruption in politics and government. *Thompson v. Dauphinais*, 217 F. Supp. 3d 1023, 1029 (D. Alaska 2016)."

recommended in Attorney General Opinion No. 2019200671 (October 14, 2019) ("AGO").[13] Meyer's First Summary was clearly intended to be used on both the petition signature booklets and on the ballot, and was explicitly described as "ballot-ready."[14] Meyer's First Summary grossly misrepresented three major provisions of the Fair Share Act: (1) Section 2 concerning its applicability; (2) Section 1 and 4(a) concerning an additional 15 percent tax on net production value at $50 per barrel or more; and (3) Section 7 concerning the transparency of the tax filings for the major oil fields.

Section 2 (Applicability) of the Fair Share Act ("Section 2") states that its provisions "only apply to oil produced from fields, units, and nonunitized reservoirs north of 68 degrees north latitude that have produced in excess of 40,000 barrels of oil per day in the previous calendar year *and* in excess of 400,000,000 barrels of total cumulative oil production" (emphasis added).[15] The use of the conjunctive term "and" in the applicability section of the Fair Share Act makes clear both production thresholds must be met before its provisions apply.[16]

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[13] AGO at 12. [Exc. 0104]

[14] AGO at 11 ("We have prepared a ballot-ready petition title and summary to assist you in complying with AS 15.45.090(2) and AS 15.45.180, as is our office's standard practice. Under AS 15.45.180, a ballot proposition must include a 'true and impartial summary of the proposed law.'"). [Exc. 0103] Clearly, the First Summary was intended to be the summary used for the ballot and expressly stated this truth and referred specifically to AS 15.45.180, which, of course, is the statute providing direction for the summary to be placed on the ballot. To the contrary of this clear language and intention, Meyer has inexplicably taken the position in his Answer that the First Summary was only intended for the signature booklets.

[15] Fair Share Act. [Exc. 0091]

[16] Fair Share Act. [Exc. 0091]

Meyer's description of Section 2 in the First Summary states that "[t]his act would change the oil and gas production tax for areas of the North Slope where the company produced more than 40,000 barrels of oil per day in the prior year *and/or* more than 400 million barrels total. *It is unclear whether the area has to meet both the 40,000 and 400,000 million thresholds or just one of them*" (emphasis added).[17]

In his First Summary, Meyer made little attempt to provide a true and impartial summary of Section 2 of the Fair Share Act. Instead, Meyer took considerable latitude in his efforts to confuse the fields to which the Fair Share Act would apply. Meyer describes the conjunctive term "and" to mean its opposite, the disjunctive term "or," or something quite different, the combined terms "and/or." Meyer's use of "and/or" rather than "and" dramatically changes the meaning and applicability of the Fair Share Act by applying it to production from many more fields than the plain language of Section 2 provides. Even the guide to legislative drafting prohibits use of the phrase "and/or" because of the ambiguity it creates.[18]

Meyer's description of Section 2 further incorrectly summarized "400,000,000" barrels" as "400,000 million" barrels. Meyer's use of "400,000" million barrels rather than "400,000,000" barrels again dramatically changes the meaning and applicability of the Fair Share Act by making the cumulative threshold 1,000 times greater than the plain language of Section 2 and 20 times greater than all the oil that has been produced in Alaska to date.

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[17] First Summary. [Exc. 0104]

[18] *See* Manual of Legislative Drafting, Legislative Affairs Agency at 60 (2019 ed.) ("Do not use 'and/or' because it is too ambiguous.").

Meyer's use of "400,000" million as a summary of the cumulative threshold would mean the Fair Share Act would not apply to any production in our lifetimes.[19]

Similarly, in his First Summary, Meyer made little attempt to provide a true and impartial summary of Sections 1 and Section 4(a) of the Fair Share Act. Instead, Meyer took considerable latitude again in his efforts to summarize an "additional" 15 percent rate increase to the existing 35 percent rate when the Production Tax Value was at or above $50 per barrel as the implicit repeal of the existing 35 percent rate.

Section 1 of the Fair Share Act states, "the Oil and Gas Production Tax in AS 43.55 *shall be amended* as follows:" (emphasis added), and Section 4(b) (Tax on Production Tax Value) of the Fair Share Act ("Section 4(b)") states "An *additional* production tax shall be paid [when the] Production Tax Value of taxable oil is equal to or more than $50. The *additional* tax shall be the difference between the average monthly Production Tax Value of a barrel of oil and $50, multiplied by the volume of taxable oil . . . multiplied by 15 percent" (emphasis added).[20]

This Section 4(b) of the Fair Share Act simply creates a progressive tax by adding an "additional" tax bracket of 15 percent onto the existing tax of 35 percent when the "production tax value" is at $50 and above.[21] Thus, at below $50 per barrel of production

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[19] Answer at 4 ¶ 19 ("The defendants admit the petition summary includes a typo where it should say 400 million instead of 400,000 million."). [Exc. 0113] Defendant Meyer's characterization of his mistake as a "typo" would be more credible if not for his refusal to correct it or discuss it even after Fair Share forwarded a redline version correcting the "typo" to his counsel.

[20] Fair Share Act. [Exc. 0092]

[21] Fair Share Act. [Exc. 0092] This is similar in concept to the progressive brackets added to Section 3 (Alternative Gross Minimum Tax) of the Fair Share Act.

tax value, the existing tax of 35 percent of production tax value under AS 43.55.011(e)(2) is unchanged and would continue to apply. While at $50 and above of production tax the existing tax of 35 percent under AS 43.55.011(e)(2) is unchanged and would continue to apply plus the "additional" tax under Section 4(b) of 15 percent or a total tax of 50 percent of production tax value would apply.

"Production Tax Value" are capitalized terms in the Fair Share Act because they have a specific definition under AS 43.55.160(a)(1).[22] The existing and only current tax on "production tax value" is set forth in AS 43.55.011(e)(2), which provides that "after January 1, 2014, and before January 1, 2022, the tax is equal to the annual production tax value of the taxable oil and gas as calculated under AS 43.55.160(a)(1) multiplied by 35 percent."

Importantly, the existing 35 percent tax on "production tax value" set forth in AS 43.55.011(e)(2) is the *only* tax on production tax value. As the *only* tax on production tax value, the existing 35 percent tax is the only possible tax Section 4(b) could have referenced when it states it is an "additional" tax on production tax value. This obvious conclusion was even noted in the AGO which stated, "The sponsors likely intended for this to be in addition to the existing tax levied by AS 43.55.011(e)."[23]

Further, nothing in the Fair Share Act purports to repeal the existing 35 percent tax on production tax value set forth in AS 43.55.011(e)(2). To the contrary, Section 4(b)

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[22] AS 43.55.160(a)(1) defines "production tax value" as "the gross value at the point of production . . . under AS 43.55.011(e), less the producer's lease expenditures under AS 43.55.165 . . . ." Essentially, the term "production tax value" reflects one measure of an oil producer's profits.

[23] AGO at 5. [Exc. 0097]

expressly identifies the tax it imposes as an "additional" tax on production tax value in two separate places. Section 4(b) also sets forth a detailed method of calculation that only applies the Section 4(b) additional tax as an "additional" tax at and above $50 per barrel of production tax value. Again, the language and proper calculation of the "additional" tax both anticipate the continuing application of the existing 35 percent tax on production tax value. Simply stated, the "*additional*" tax simply does not mean, cannot be interpreted, and cannot be summarized in a true and impartial manner to mean the "*only*" tax on net production tax value.

Meyer's First Summary description of Section 4(b) deleted any reference to the Section 4(b) additional tax as an "additional" tax, assumed the implicit repeal of the existing 35 percent tax, ignored the proper understanding set forth by one voice in the AGO, embraced that the resulting calculation would render Section 4(b) meaningless because it would "would likely always be less" than the alternative tax on gross value, and found a way to summarize the additional 15 percent increase under Section 4(a) as a massive tax decrease.[24]

Finally, and central to the issues before this Court on appeal, in his First Summary, Meyer made little attempt to provide a true and impartial summary of Section 7 of the Fair Share Act. Instead, Meyer took untenable latitude in his efforts to summarize the transparency requirement to simply mean the existing practice of maintaining confidentiality would continue. It is not just that Meyer is attempting to bias his summary

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[24] The massive tax reduction would be from 35 percent to zero when production tax value was less than $50 per barrel and from 50 percent to 15 percent when production tax value was at or greater than $50 per barrel.

of the transparency provision, he is attempting to summarize it to mean it would achieve no change to the existing law--the opposite of its language and its sponsors' clear intention.

Section 7 states, "All filings and supporting information provided by each producer to the Department relating to the calculation and payment of taxes set forth in Sections 3 and 4 shall be a matter of public record."[25] The meaning of "all" does not permit exception or mean "some." The meaning of "shall" is mandatory not permissive and does not permit agency discretion. And, the meaning of "a matter of public record" does not permit tax filings to remain confidential. Taken together, Section 7 means what it says, all tax filings shall be a matter of public record.

Recognizing this correct interpretation, the AGO stated: "[Section 7] would conflict with current law that actually makes it a crime to disclose confidential tax documents. [Footnote omitted] Based on the 'Notwithstanding . . .' language, we assume this provision is intended to supersede the existing statute for any tax documents submitted for areas falling under section 2 of the initiative bill."[26] This statement offers an interpretation rather than a summary, but it does offer exactly the correct interpretation of Section 7.

Unfortunately, the voice in the AGO which offered the correct interpretation was not the voice that guided Meyer. In fact, the First Summary stated, "The Act would also make all tax documents relating to the calculation and payment of the new taxes a matter of public record. *This would mean the documents would be reviewed under the normal Public Records Act process, and any information that needed to be withheld, for example*

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[25] Fair Share Act. [Exc. 0092]
[26] AGO at 6. [Exc. 0098]

for privacy or balance-of-interests reasons, would be withheld"[27] (emphasis added). In turn, this voice in the AGO goes on to suggest the application of the Public Records Act would mean confidentiality "would likely apply to most, if not all, of the tax documents."[28]

As a result of the obvious flaws in Meyer's First Summary, counsel for Fair Share contacted counsel for Meyer to discuss the First Summary, but counsel for Meyer refused to even discuss the First Summary absent litigation.[29] Direct democracy has little place and this Court should have little patience for a public official that uses the power of his office and his limited role to summarize the Fair Share Act as an opportunity to bias voters against its provisions and refuses to even discuss obvious mistakes to his summary absent litigation. As a result, Fair Share was forced to initiate the underlying lawsuit.

Meyer's Second Summary. Not until Fair Share brought suit against Meyer did he concede two of the three major biased interpretations set forth in his First Summary. On March 17, 2020, Meyer sent an amended version of the First Summary for use on the ballot ("Second Summary").[30] For the purposes of his appeal, there is no reason to detail to this Court the manner in which Meyer conceded. It is, however, central to this appeal for this Court to understand the one issue Meyer did not concede in his Second Summary.

Meyer's refused to concede and correct his summary of the transparency provision set forth in Section 7 of the Fair Share Act. Instead of correcting the bias in his First Summary, Meyer chose to simply shorten and better conceal his biased interpretation in

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[27] First Summary. [Exc. 0104]
[28] AGO at 6. [Exc. 0098]
[29] Email from Ms. C. Mills to Mr. R. Brena (October 21, 2019). [Exc. 0106]
[30] Second Summary. [Exc. 0108-09]

the Second Summary. Accordingly, the sentence in Meyer's First Summary which stated, "This would mean the documents would be reviewed under the normal Public Records Act process, and any information that needed to be withheld, for example for privacy or balance-of-interests reasons, would be withheld," was shortened to read, "This would mean the normal Public Records Act process would apply" in Meyer's Second Summary.[31]

While initially appearing less innocuous, Meyer's shortening of the sentence in the First Summary did nothing to avoid his biased position that Section 7 would not change the existing law and tax filings would remain confidential. Instead, his shortening of the sentence simply better concealed his intent and interpretation. That said, Meyer's interpretative goal is revealed in the AGO's observation that the normal Public Records Act process would result in "most, if not all, of the tax documents" remaining confidential,[32] Thus, while the language changed marginally, his biased interpretation of Section 7 continued to mean there would be no change to the current law and the tax filings would remain confidential at the discretion of the agency. In essence, Meyer continued to advance an interpretation through his right to summarize the Fair Share Act that continued to be exactly the opposite of the language and intention of Section 7. Far from being a true and fair summary of Section 7, Meyer's shorted extraneous sentence rendered Section 7 entirely meaningless.

Section 1 of the Fair Share Act provides, "Notwithstanding Any Other Statutory Provisions to the Contrary, the Oil and Gas Production Tax in AS 43.55 Shall Be Amended

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[31] Second Summary at 2. [Exc. 0109]
[32] AGO at 6. [Exc. 0098]

as Follows: . . ." In turn, Section 7 provides, "All filings and supporting information provided by each producer to the Department relating to the calculation and payment of the taxes set forth in Sections 3 and 4 shall be a matter of public record."

Section 7 simply requires that production tax filings under the Fair Share Act "shall be a matter of public record." In Meyer's Second Summary, as in the First Summary, Meyer interposed the least-credible legal interpretation possible when he states, "This would mean the normal Public Records Act process would apply"[33] and "most, if not all, of the tax documents" would remain confidential.[34]

Meyer's Third Summary. After the superior court ruled against Meyer and required the superfluous and biased sentence "This would mean the normal Public Records Act process would apply" to be removed, Meyer then made his third attempt on reconsideration to keep the tax filings of his former employer, ConocoPhillips, confidential from Alaskans. On reconsideration, Meyer proposed to add a new sentence that read, "The act does not specify the process for disclosure of the public records and whether any exceptions may apply" ("Third Summary").[35] Meyer's attempt to change his position and advance altogether new language for the summary through reconsideration is procedurally improper and should not be considered by this Court at all. In the event it is given any consideration at all, its suggestion that "exceptions" may somehow apply permitting the tax filings to continue to be held confidential simply continues his bias through alternative language. Section 7 of the Fair Share Act provides that "All [tax] filings . . . shall be a

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[33] Second Summary at 2. [Exc. 0109]
[34] AGO at 6. [Exc. 0098]
[35] Third Summary [Exc. 0308-09]

matter of public record." "All" does not mean "some." "Shall" does not mean "may." And, "be a matter of public record" does not mean "will remain confidential." The language of Section 7 leaves no possible confusion as to "whether any exceptions may apply." They may not, and to suggest otherwise is to skew the summary with bias.

The Superior Court's Holding. The superior court properly found that Meyer failed to articulate how the biased interpretive language represented a true and impartial summary of Section 7. Instead, the superior court held Meyer placed "his finger on the scales" by affirmatively stating that "section 7 does not mean or accomplish what its sponsors say was their intent or would be the effect of the initiative."[36] Meyer has not advanced a single case or statute in which the word "all" has been held to mean "some," the word "shall" has been held to mean "may," or the words "shall be a matter of public record" have been held to mean "will remain confidential." Nor has Meyer offered any rational explanation as to why sponsors would advance an initiative with a transparency provision at all if their intention was to maintain tax filings confidential that are already held confidential. Indeed, and perhaps most importantly, Meyer has failed to explain why the actual words "All [tax] filings . . . shall be a matter of public record" requires him to weigh in with an interpretative sentence at all. The superior court rightly struck Meyer's interpretive sentence to allow Alaskan voters to decide for themselves what the words "All [tax] filings . . . shall be a matter of public record" mean in the voting booth, and not permit

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[36] Order re Plaintiff's Motion for Summary Judgment and Defendants' Motion for Summary Judgment (June 8, 2020) ("Order") at 16 (June 8, 2020). [Exc. 0303]

Meyer's series of biased pre-enactment interpretations to confuse the matter. As discussed below, this Court should affirm that decision.

STANDARD OF REVIEW

To amend a summary, the Alaska courts must reasonably determine the summary is not "impartial and accurate."[37] Those opposed to the summary must "demonstrate that it is biased or misleading.'"[38] Courts apply their "independent judgment to questions of law, adopting 'the rule of law most persuasive in light of precedent, reason, and policy.'"[39]

ARGUMENT

I. THE SUPERIOR COURT CORRECTLY FOUND THAT THE BALLOT SUMMARY WAS NOT TRUE AND IMPARTIAL

A. Section 7 of the Fair Share Act Is Plain on Its Face and Meyer's Summaries Distorted that Plain Meaning.

Section 7 states, "All filings and supporting information provided by each producer to the Department relating to the calculation and payment of taxes set forth in Sections 3 and 4 shall be a matter of public record."[40] The common meaning of "a matter of public record" in statute and case law is that "a matter of public record" is "not confidential." For example, the relevant tax statute AS 40.25.100(a) provides that "[i]nformation in the possession of the Department of Revenue that discloses the particulars of the business or affairs of a taxpayer or other person . . . is not *a matter of public record* . . . . The

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[37] *Planned Parenthood of Alaska v. Campbell,* 232 P.3d 725, 729 (Alaska 2010) (quoting *Alaskans for Efficient Gov't, Inc. v. State*, 52 P.3d 732, 735 (Alaska 2002)).
[38] *Planned Parenthood*, 232 P.3d at 729 (quoting *Pebble Ltd. P'ship,* 215 P.3d 1064, 1083 (Alaska 2009).
[39] *Planned Parenthood*, 232 P.3d at 729 (quoting *Jacob v. State, Dep't of Health & Soc. Servs.*, 177 P.3d 1181, 1184 (Alaska 2008)).
[40] Section 7 of the Fair Share Act. [Exc. 0092]

information *shall be kept confidential* except when its production is required in an official investigation, administrative adjudication . . . or court proceeding" (emphasis added). If a document is "a matter of public record," the document is available to the public and not confidential.[41]

The analysis in the AGO recognized that "[Section 7] would conflict with current law that actually makes it a crime to disclose confidential tax documents. [Footnote omitted] Based on the 'Notwithstanding . . .' language, we assume this provision is intended to supersede the existing statute for any tax documents submitted for areas falling under section 2 of the initiative bill."[42] Nonetheless, the First Summary offered in the AGO stated, "The Act would also make all tax documents relating to the calculation and payment of the new taxes a matter of public record. *This would mean the documents would be reviewed under the normal Public Records Act process, and any information that needed to be withheld, for example for privacy or balance-of-interests reasons, would be withheld*"[43] (emphasis added). This interpretation would mean confidentiality "would likely apply to most, if not all, of the tax documents."[44]

The Second Summary shortened the erroneous sentence above to read: "This would mean the normal Public Records Act process would apply."[45] Given the AGO's observation that the "normal Public Records Act process" would result in "most, if not all,

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[41] *See* n.64, *infra*.
[42] AGO at 6. [Exc. 0098]
[43] First Summary. [Exc. 0104]
[44] AGO at 6. [Exc. 0098]
[45] Second Summary at 2. [Exc. 0109]

of the tax documents" remaining confidential,[46] Meyer's extraneous interpretive sentence could only mean the tax filings would remain confidential—the exact opposite of the plain meaning, the obvious intent of the language, the publicly stated intentions of the sponsors, and the AGO's own acknowledgment of the sponsors' intention. Far from being a true and fair summary of Section 7, Defendant Meyer's interpretative sentence in the Second Summary would render Section 7 entirely meaningless because there would be no change whatsoever to the confidential status of tax filings under the Fair Share Act.

Preparing a true and impartial summary for an initiative is, by definition, an exercise in summarizing. It is not an exercise in interpreting the language of the initiative, much less interpreting the language in a biased manner that forecloses the acknowledged and most likely intention of the initiative sponsors. Meyer argues that the ballot summary is distinct from the sponsors' summary and may address the legal import of the initiative,[47] but this does not permit Meyer to confuse and distort the plain meaning expressly acknowledged by the plain language, the sponsors, and the AGO.

The superior court rightly prevented Meyer from substituting his voice for the voice of the initiative sponsors under the guise of providing a true and impartial summary. The true and impartial summary of this language would be to simply state, as the Second Summary did, "The Act would also make all tax documents relating to the calculation and payment of the new taxes a matter of public record." And *not* to then add, as the Second Summary continued, "This would mean the normal Public Records Act process would

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[46] AGO at 6. [Exc. 0098]
[47] Brief of Appellants at 12, 17.

apply." Meyer's extraneous interpretative sentence referred to the Public Records Act, but as the superior court noted, "[t]he initiative never mentions the Public Records Act."[48] The the only implicit reference to the Public Records Act is the "notwithstanding" language of Section 1. Taken together, Section 1 and Section 7 would require tax filings under the Fair Share Act to be a matter of public record "notwithstanding any other statutory provision [including the Public Records Act] to the contrary."[49] If a proper extraneous interpretative sentence was needed (which it was not), it would read, "This would mean the normal Public Records Act process would [not] apply."[50]

Section 7 is a key provision of the Fair Share Act designed to allow Alaskans greater transparency into the impacts of our oil policies on the development of the hundreds of billions of dollars of oil resources. When Section 7 is enacted, it will allow all Alaskans to know the revenues, costs, and profits of each of the major international oil producers from each of the three largest and most profitable oil fields in Alaska. Initiatives are used to propose new laws. Initiative sponsors do not go through the difficulties of direct democracy to advance an initiative to change nothing. The very suggestion by Meyer that Section 7 is an attempt by the initiative sponsors to propose the same law as existed before the initiative is absurd and should not be given a moment's consideration by this Court.

Even assuming Meyer's interpretation of Section 7 is somehow plausible, the decision as to its correctness should be left to post-enactment litigation. This Court has wisely counseled against allowing officials or the courts to conduct a pre-election review

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[48] Order re Summary Judgment at 17. [Exc. 0304]
[49] Bracketed reference added.
[50] Bracketed reference added.

of an initiative, describing that principle as "a prudential one, steeped in traditional policies recognizing the need . . . to uphold the people's right to initiate laws directly, and to check the power of individual officials to keep the electorate's voice from being heard."[51] When the Fair Share Act is passed by the electorate, their voice will be clear that tax filings under the Fair Share Act "shall be a matter of public record" and not kept confidential from the electorate a moment longer. Meyer's new expression of speculative concern that, without his summary language weakening the scope of the Fair Share Act, the initiative may be subject to constitutional challenge[52] is irrelevant at this stage, though at the appropriate time Fair Share will welcome a discussion regarding the use of Alaska's natural resources "for the maximum benefit of its people."[53] The purpose of the ballot summary is to provide a true and impartial description, and the superior court correctly left arguments regarding Meyer's interpretation to post-adoption, rather than allowing them in the ballot summary where they do not belong.

B. The Second Summary Cannot Be Separated from the Original Summary and the Attorney General Opinion Containing It.

Meyer repeatedly attempts to separate the Second Summary from the First Summary and the AGO that generated it.[54] But absent Fair Share's litigation, the Second Summary would not exist,[55] and it merely modifies the prior language of the First Summary without

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[51] *Alaskans for Efficient Government v. State*, 153 P.3d 296, 298 (Alaska 2007).
[52] Brief of Appellants at 19.
[53] Alaska Constitution art. VIII § 2.
[54] Brief of Appellants at 22-23.
[55] *See* n.14 and n.29, *supra.*

offering any new analysis for the language. The AGO supporting the First Summary therefore remains relevant to the Second Summary and Meyer's improper Third Summary.

The First Summary summarized Section 7 as: "The Act would also make all tax documents relating to the calculation and payment of the new taxes a matter of public record. This would mean the documents would be reviewed under the normal Public Records Act process, and any information that needed to be withheld, for example for privacy or balance-of-interests reasons, would be withheld."[56] The Second Summary shortened the erroneous sentence but did nothing to depart from its stated reasoning. Given the AGO's observation that "the normal Public Records Act process" would result in "most, if not all, of the tax documents" remaining confidential,[57] Meyer's remaining interpretative sentence in the Second Summary still rendered Section 7 meaningless because there would be no change whatsoever to the confidential status of tax filings under the Fair Share Act.

If the remaining sentence in the Second Summary were a plain procedural note on how the public information would be accessed, as Meyer ultimately suggested to the superior court,[58] it would merely be superfluous; but, in the context of the First Summary and the reasoning of the AGO, stating that "the normal Public Records process would apply" is not true and impartial, but the exact opposite of the plain meaning, the obvious

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[56] First Summary. [Exc. 0104]
[57] AGO at 6. [Exc. 0098]
[58] Defendants' Opposition at 16-17 (May 15, 2020). [Exc. 0233-34]

intent of the language, the publicly stated intentions of the sponsors,[59] and the AGO's own acknowledgment of the sponsors' intention. The superior court recognized this in finding that Meyer's strained argument "cuts too fine a distinction" because there "was no disagreement about to what state agency should a member of the public send her request. The dispute is over whether the filings would always be accessible to the public, as Vote Yes contends, or whether some filings would remain confidential, as the Department of Law initially advised."[60] Just as it is misleading to view the Second Summary without the Summary and the AGO, it is equally misleading to include the stricken sentence arising from those summaries rather than simply let the Fair Share Act speak for itself.

C. "A Matter of Public Record" Does Not Mean "May Be Held Confidential," but the Superior Court Left this Issue for Post-Enactment Determination.

In arguing that exemptions under the Public Records Act may still apply,[61] Meyer continues to conflate the terms "a matter of public record" with the terms "public record" and "public document," when those terms have distinct definitions.[62] In doing so, Meyer creates a strawman. Section 1 and Section 7 of the Fair Share Act require that

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[59] *See* Exhibits F-H attached to Fair Share's Motion [Exc. 0117-0140] and Exhibit K attached to Fair Share's Reply, printout from Fair Share website regarding transparency. [Exc. 0279]

[60] Order at 16-17. [Exc. 0303-04]

[61] Brief of Appellants at 23.

[62] *See* RECORD, Black's Law Dictionary (11th ed. 2019) ("**public record.** (16c) A record that a governmental unit is required by law to keep, such as land deeds kept at a county courthouse. • Public records are generally open to view by the public. *Cf. public document* under DOCUMENT (2).;" DOCUMENT, *Id.* ("- public document. (17c) A document issued or published by a political body or otherwise connected with public business. *Cf. public record* under record."); MATTER, *Id.* ("**matter of record.** (16c) A matter that has been entered on a judicial or other public record and can therefore be proved by producing that record.") (bold emphasis added).

"notwithstanding" any other statute (which includes the Public Records Act), all tax filings under the Fair Share Act shall be a matter of public record. Meyer's repeated attempts to impose his Public Records Act arguments to mean tax filings under the Fair Share Act may continue to be held confidential directly contradict the express language of both Section 1 and Section 7 of the Fair Share Act. Stated differently, whether Meyer is right or wrong in his strawman argument that the tax filings are public records, he is wrong that those tax filings may be held confidential.

As Fair Share has repeatedly briefed, the phrase "a matter of public record" is not defined in the Public Records Act, but its meaning is obvious in every Alaska statute in which it is used—and, without exception, the phrase means the opposite of confidential.[63] This is the common meaning of the term as used across the country,[64] and Meyer offers no

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[63] AS 08.18.021(b) ("The information contained in the application shall be a matter of public record and open to public inspection."); AS 27.21.100(c)(1),(2) (information "must be kept confidential and not made a matter of public record"); AS 37.10.230(b) (disclosure "is a matter of public record and shall be included in the minutes of the board meeting next following the disclosure."); AS 37.13.110(b) (disclosure "is a matter of public record and shall be included in the minutes of the board meeting next following the disclosure."); AS 40.25.100(a) (information "that discloses the particulars of the business or affairs of a taxpayer or other person . . . is not a matter of public record [and] shall be kept confidential"); AS 44.25.028(b) (disclosure "is a matter of public record and shall be included in the minutes of the board meeting next following the disclosure."); AS 44.88.215(a) ("unless the records or information were a matter of public record before submittal to the authority, the following records and information shall be kept confidential"); AS 14.03.110(a) (questionnaire or survey impermissible if it "inquires into personal or private family affairs of the student not a matter of public record or subject to public observation"); AS 44.33.020(a)(36) ("data collected under this paragraph that discloses the particulars of an individual business is not a matter of public record and shall be kept confidential"); AS 38.05.810(c) ("Any information provided the state in the course of an audit becomes a matter of public record.").

[64] *See, e.g., Downie v. Superior Court*, 888 P.2d 1306, 1308 (Alaska App. 1995) ("[T]he date set for trial is a matter of public record and cannot conceivably be considered confidential.") (quoting *State v. Bilton,* 36 Or. App. 513, 585 P.2d 50, 52 (1978)); *William*

E. Schrambling Accountancy Corp. v. U.S., 937 F.2d 1485, 1487–90 (9th Cir. 1991) (granting judgment in favor of government's position that recording of liens "made the information a matter of public record to which no reasonable expectation of privacy could attach" and no longer confidential); *Rodgers v. Hyatt*, 697 F.2d 899, 902 (10th Cir. 1983) ("It is well established under the law dealing with actions for invasion of privacy that no reasonable expectation of privacy attaches to those matters that are a matter of public record.") (citing *Cox Broadcasting Corp. v. Cohn,* 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975); Restatement (Second) of Torts, Explanatory Notes, Section 652D, comment b, at 385 (1977) ("Thus there is no liability for giving publicity to facts about the plaintiff's life that are matters of public record")); *In re Colonial Mortgage Bankers Corp.*, 324 F.3d 12, 19 (C.A.1 2003) ("matters of public record are fair game in adjudicating Rule 12(b)(6) motions, and a court's reference to such matters does not convert a motion to dismiss into a motion for summary judgment.") (citation omitted); *Slade v. Schneider*, 129 P.3d 465, 471, 212 Ariz. 176, 182 (Ariz. App. Div. 1 2006) ("Though no published cases interpret when the Commission makes the names, information and documents a matter of public record, we need not determine all of the Commission's actions that would result in the names, information and documents no longer being confidential because we agree with the Commission that this occurs when the Commission files the information or documents with a public tribunal."); *Havens v. State of Ind.*, 793 F.2d 143, 145 (7th Cir. 1986) ("the information elicited during Milford's cross-examination was not confidential information because it was a matter of public record."); *Lopez v. Wal-Mart Stores, Inc.*, 2012 WL 929851, at *2 (N.D. Cal. 2012) ("Only after Lopez pointed out that the consent decree was public did Wal–Mart withdraw the designation. In other cases, too, Lopez has been able to locate Wal–Mart's policies in public record and again after pointing it out, caused Wal-Mart to withdraw its 'confidential' designation of documents."); *In re Highway Truck Drivers and Helpers Local Union No. 107*, 86 B.R. 404, 412 (1988) ("[V]irtually all financial information related to a debtor's affairs are matters of public record and are thus not confidential."); *Williams v. Coffee County Bank,* 308 S.E.2d 430, 432 (1983) ("It would be anomalous indeed to permit appellant to recover for appellees' breach of an implied duty of confidentiality when the only information disclosed was a matter of public record and indisputedly [sic] was not confidential."); *Tippecanoe County v. Indiana Mfrs. Ass'n*, 784 N.E.2d 463, 467 (Ind. 2003) ("The assessed valuation of tangible property is a matter of public record and is thus not confidential."); *Barnett v. Matz*, 483 S.W.2d 315, 319 (Tex. Civ. App. 1972) ("The information Barnett passed on to Matz was not confidential, but was a matter of public record,"); *Doe v. Kelley*, 961 F.Supp. 1105, 1112 (1997) ("[P]laintiffs have failed to demonstrate the existence of a legitimate privacy interest in preventing compilation and dissemination of . . . information that is . . . a matter of public record."); *First Nat'l Bank in Lenox v. Brown,* 181 N.W.2d 178, 183 (Iowa 1970) ("[T]he encumbrances held . . .were of public record so could not be classified as private or personal."); *Hunkins v. Lake Placid Vacation Corp., Inc.,* 120 A.D.2d 199, 202 (NY 1986) ("Nor do we find that it has been demonstrated that [counsel for Respondents] had access to confidential information. . . . [Appellant's] allegations are couched in the most general of terms, e.g., 'privileged and confidential business information'. . . . [Respondent's

authority providing that "a matter of public record" means "may be held confidential." A matter of public record is not subject to the "normal Public Record Act process" of determining whether to withhold information as described in the AGO. Instead, the Fair Share Act has removed the tax filings from the normal discretionary process under the Public Records Act by requiring that all tax filings shall be a matter of public record. This means, they *cannot* be withheld from the public. On this point, the superior court agreed that "the phrase 'a matter of public [record]' is often used as shorthand to mean information or documents are not [to] be kept confidential but will be available for public inspection."[65] Also of note, Fair Share has detailed exactly how the Fair Share Act and the Public Records Act are intended to be integrated in full legislative form.[66] Fair Share worked with Senator Wielechowski and Legislative Legal to draft a substantially similar bill to the Fair Share Act for the Legislature to consider. Senate Bill 129 details how Section 7 was intended to be integrated into the Public Records Act. Its integration is not difficult and does not involve any of the confusion inherent in Meyer's efforts to undercut transparency under the Fair Share Act.

Finally, Fair Share did not ask the superior court, and does not now ask this Court, to render judgment on what the phrase "a matter of public record" means in the initiative,

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counsel] contends that . . . the only map he ever saw also was one presented to the Village Board, so they too are matters of public record and not confidential."); *Pinehurst, Ltd. v. Jarratt*, 1991 WL 241184, at *3 (Tenn. 1991) (not reported in S.W.2d) (agreeing with the trial court that "the existence of [a] mortgage on the property was a matter of public record and, therefore, not confidential."); LOST IN TRANSLATION, 27-FALL Fam. Advoc. 20, 4 (Fall 2004) "[I]nformation translated in a court setting will typically be a matter of public record and, thus, not confidential.").

[65] Order at 14. [Exc. 0301]

[66] Text of Senate Bill No. 129 (January 21, 2020). [Exc. 0146-90]

but only asks that its meaning not be lost through Meyer's repeated attempts to use the summary to undercut the transparency provision of the Fair Share Act.

II. THE SUPERIOR COURT CORRECTLY REJECTED THE IMPROPER MOTION FOR RECONSIDERATION.

Following the superior court's decision, Meyer filed an improper motion for reconsideration that the court denied without comment.[67] This denial was correct on both procedural and substantive grounds.

A. Meyer Improperly Proposed Changes to the Superior Court's Order.

A party may move for reconsideration of an order under Civil Rule 77(k)(1) if a party believes the court has overlooked, misapplied, or failed to consider a statute, decision, or principle directly controlling; overlooked or misconceived some material fact or proposition of law; overlooked or misconceived a material question in the case; or if the law applied in the ruling has been subsequently changed by court decision or statute. Meyer did not do this. Instead, he argued that in granting summary judgment against him, the court "did not foreclose the Lieutenant Governor from making further changes to better conform to the Court's order while also ensuring that voters have a full, accurate, and impartial summary that does not weigh in on the dispute over the meaning of Section 7 one way or the other."[68]

Procedurally, after the superior court ruled and resolved every issue in the case was not an appropriate time to permit Meyer to change his position and introduce new ballot

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[67] Order Denying Defendants' Motion to Make Additional Findings and Amend Order or Alternatively for Clarification (June 26, 2020). [Exc. 0328]

[68] Meyer's Motion for Clarification and Submission of Revised Ballot Summary Motion at 1-2 (June 12, 2020). [Exc. 0306-07]

language for the third time. Meyer's filing was not a proper request for reconsideration, clarification, or further findings. Meyer made no effort to meet the legal standards for the superior court to reconsider its order, to clarify its order, or to add additional findings of fact. Meyer pointed to no error in law or fact, or any issue requiring clarity or additional findings (the superior court did not and was not required to issue separate findings). Instead, Meyer simply wanted to change his position once more because he had lost, despite the superior court's ruling to "Let the public decide whether it favors what Vote Yes claims its initiative is intended to achieve. . . . For now the most important goal is to allow Vote Yes to present its vision of taxation and transparency to the voters." Meyer did not accept the superior court's decision that "[i]f the initiative passes, then the disputes about what the language of the initiative actually accomplishes can be litigated."[69] Meyer had no proper grounds to seek reconsideration of that decision.

The superior court ordered what the language of the ballot summary is to be. Meyer preferred a different summary and regarded his third version as "better" than the court's, but he offered no authority for proposing changes to the ballot summary ordered by the court. He merely pointed vaguely to "amended findings" or "clarification" to seek *de facto* reconsideration of the Order without stating any of the required grounds.

Meyer's position in his briefing to the superior court was that Fair Share's challenge to the Second Summary was untimely and the Second Summary was true and impartial. Having lost both positions, he nonetheless advanced a new position based on a new third ballot summary. This Court has made clear that "[a]n issue raised for the first time in a

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[69] Order at 17. [Exc. 0304]

motion for reconsideration is not timely" and is deemed waived.[70] Indeed, Meyer's new position would have been improper even in his reply before the court:

> The function of a reply memorandum is to respond to the opposition to the primary motion, not to raise new issues or arguments, much less change the nature of the primary motion. *E.g., Alaska State Employees Ass'n v. Alaska Public Employees Ass'n*, 813 P.2d 669, 671 n.6 (Alaska 1991) (argument raised for the first time in reply memorandum could not be considered); *Bittner v. State*, 627 P.2d 648, 649 (Alaska 1981) (summary judgment may not be upheld on the basis of a ground which was urged for the first time in the movant's reply memorandum).[71]

"In general, evidence which is necessary to prove a prima facie case should be presented in the plaintiff's case in chief. 6 J. Wigmore, Sec. 1873, at 678."[72] Meyer was required to fully present his case before the court and allow Fair Share to fully respond, not wait until after the court ruled against him to advance an alternative position under the guise of amending non-existent findings or seeking clarification of an Order that was clear.

Fair Share and the court system are not sounding boards for Meyer to continue brainstorming different ballot summaries until he is satisfied. Any such collaborative discussion could and should have taken place prior to Defendant's forcing Fair Share to litigate this case. It was far too late for a "do over" once the superior court had been fully advised by briefing and oral argument on an expedited basis for appeal to this Court.

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[70] *Stephanie W. v. Maxwell V.*, 319 P.3d 219, 225-26 (Alaska 2014); *see also Stadnicky v. Southpark Terrace Homeowner's Ass'n*, 939 P.2d 403, 405 (Alaska 1997) (citing *Miller v. Miller*, 890 P.2d 574, 576 n. 2 (Alaska 1995) ("[T]he issue was improperly raised in the motion for reconsideration, since it had never previously been raised.")); *McCarter v. McCarter*, 303 P.3d 509, 513 (Alaska 2013) ("[Appellant] made this statutory argument for the first time in his motion for reconsideration, and it is therefore waived.")

[71] *Demmert v. Kootznoowoo, Inc.*, 960 P.2d 606, 611 (Alaska 1998).

[72] *Sirotiak v. H.C. Price*, 758 P.2d 1271, 1278 (Alaska 1988).

B. Meyer's Improper Third Summary Continued the Rejected Distortion of the Plain Text and Clear Intent of Section 7.

Fair Share asked only to let the phrase "matter of public record" speak for itself on the ballot, and the superior court so ordered:

> The most impartial resolution of the meaning of Section 7 and the impact it would have on public access to the producers' filings is to say nothing about the Public Records Act. Let the public decide whether it favors what Vote Yes claims its initiative is intended to achieve. Vote Yes wants more transparency in the State's taxation regime as it applies to producers covered by the initiative. If the initiative passes, then the disputes about what the language of the initiative actually accomplishes can be litigated. *For now the most important goal is to allow Vote Yes to present its vision of taxation and transparency to the voters.* It may be that the initiative's language is not sufficiently precise to achieve all of the sponsors' intended results. But the voters *should be permitted to voice their opinions of the sponsors' intentions without Meyer opining that the initiative does not achieve to the level of transparency that the sponsors seek through section 7.*[73]

Meyer's untimely Third Summary was contrary to the superior court's decision. Rather than accept the court's deletion and allow Fair Share to present its vision to the voters as stated in the Order, Meyer offered a third interpretive attempt at undermining the Act's plain terms: "The act does not specify the process for disclosure of the public records and whether any exceptions may apply."[74] Again, Section 7 states: "*All* filings and supporting information provided by each producer to the Department relating to the calculation and payment of the taxes set forth in Sections 3 and 4 *shall* be a *matter of public record"* (emphasis added).[75] Meyer does not accept the superior court's core ruling to "Let the public decide whether it favors what Vote Yes claims its initiative is intended to

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[73] Order at 17 (emphasis added). [Exc. 0304]
[74] Meyer's Motion for Clarification and Submission of Revised Ballot Summary Motion at 4 (June 12, 2020). [Exc. 0309]
[75] Fair Share Act. [Exc. 0092]

achieve. . . . For now the most important goal is to allow Vote Yes to present its vision of taxation and transparency to the voters."[76] Fair Share's vision of the transparency provision is the one stated in the Fair Share Act which is that, "All [tax] filings . . . shall be a matter of public record," period. Meyer continues to try to summarize Fair Share's vision to mean that some tax filings may become a matter of public record if the agency determines the exceptions under the normal Public Records process do not otherwise apply. The English language does not permit "all" to mean "some," "shall" to mean "may," or "a matter of public record" to mean "remain confidential under the exceptions in the normal Public Records process." Transparency is not for "some" tax filings under Fair Share's vision, but for "all" tax filings. Transparency is not subject to the discretion of the Department of Revenue under Fair Share's vision but mandates the Department "shall" provide all tax filings to the public. Transparency is not subject to the normal Public Record "exceptions" under Fair Share's vision, because there are no exceptions possible when the language of the initiative states, "All [tax] filings . . . shall be a matter of public record."

No matter how Meyer attempts to impose his vision, it is still tipping the scales to that vision. It is simply not a true and fair summary of Fair Share's vision to allow Meyer to add in his vision while ignoring the actual language and clear intentions of Fair Share. As this Court observed, "If the initiative passes, then the disputes about what the language of the initiative actually accomplishes can be litigated."

The improper Third Summary persisted in making a mockery of the Act's use of the words "all," "shall," and "be a matter of public record." It plainly opined the initiative

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[76] Order at 17. [Exc. 0304]

does not achieve the level of transparency the sponsors seek. For whatever reason, Meyer insists on mentioning possible exceptions to disclosure, which will obviously provide a foundation for future opposition to the Act. The superior court removed Meyer's finger from the scales of the ballot summary, then kept it off by correctly denying the improper motion for reconsideration; and Fair Share now respectfully urges this Court to do the same and explicitly foreclose further changes to the ballot summary to ensure Meyer's compliance with its ruling.

CONCLUSION

Remarkably, Meyer closes his opening brief with the brazen notion that the drafters of the Fair Share have "obscured the scope of the changes that the initiative would make to existing law" and "reference to the Public Records is needed to inform voters of the initiative's scope and allow them an opportunity for serious reflection."[77] Does Meyer seriously believe that voters do not understand the Fair Share Act's purpose in enacting long-obscured transparency—a key component of its ongoing public campaign—for Alaska's production tax? Under the banner of supposed clarity for the public, Meyer asks this Court to allow his extraneous, interpretative doubts about the scope of that transparency into the ballot summary. This Court should join the superior court in rejecting this request.

Fair Share timely appealed the mischaracterization of Section 7 in the First Summary along with the other issues that Meyer conceded in the Second Summary. Meyer's Second Summary continued to mischaracterize Section 7, and the superior court

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[77] Brief of Appellants at 25.

rightly corrected it. The superior court was also correct in denying Meyer's improper motion for reconsideration, which sought without any attempt at procedural basis to continue Meyer's efforts at inserting his interpretation of Section 7 into the ballot summary.

This Court recently affirmed another superior court order that "[t]he Alaska Constitution gives the voters great power to act independently of their elected officials" and "[i]nitiative and referendum powers allow the public to legislate and veto laws regardless of what the Legislature and Governor may say or want."[78] This Court should protect the constitutional independence of the Fair Share Act's sponsors and the voters of Alaska by affirming the ballot summary ordered by the superior court.

DATED this 21st day of July, 2020.

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[78] *Dunleavy v. State,* 2020 WL 2115477 at *3, 9 (2020) (*affirmed by State Division of Elections v. Recall Dunleavy*, Sup. Ct. No. S-17706, Order of May 8, 2020).

IN THE SUPREME COURT OF THE STATE OF ALASKA

KEVEN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and the STTE OF ALASKA, DIVISION OF ELECTIONS, Appellants, v. VOTE YES FOR ALASKA'S FAIR SHARE, Appellee.	)	Supreme Court No. S-17818

Trial Court Case No. 3AN-190-11106CI

CERTIFICATE OF SERVICE AND TYPEFACE

I hereby certify that the Brief of Appellee was (1) prepared in Times New Roman 13pt font and (2) on July 21, 2020, it was served by electronic mail and two copies of the bound brief were served by U.S. mail to the following:

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